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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM PHILLIP ARMENTROUT,  
JR.,

Defendant and Appellant.

G044542

(Super. Ct. No. 08NF1461)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James P. Marion, Judge. Affirmed in part and reversed in part.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Kevin Vienna, Deputy Attorney General, for Plaintiff and Respondent.

## INTRODUCTION

Defendant William Phillip Armentrout, Jr., appeals from his conviction for four counts of grand theft, four counts of forgery, and four counts of false personation. Over a period of 18 months, defendant received and cashed 19 pension checks from the Veterans' Benefits Administration (VA) intended for his deceased father. He was charged with one count of forgery, one count of grand theft and one count of false personation for each check, resulting in four convictions.

Defendant maintains on appeal that he should not have been convicted of four separate offenses, because he acted with one intent and one purpose in cashing the checks. He also asserts the trial court erred in suspending, rather than striking, a third one-year sentence enhancement.

## FACTS

The father of defendant William Phillip Armentrout, Jr., also named William Phillip Armentrout (Armentrout, Sr.), was a veteran who had served in Vietnam and during peacetime. As such, he was eligible for veterans' benefits. On December 2, 2005, hospitalized for brain and lung cancer, Armentrout, Sr., applied to the VA for pension benefits.<sup>1</sup> The VA received the application form 10 days later but did not approve pension benefits for Armentrout, Sr., until October 12, 2006. By that time, Armentrout, Sr., had died.<sup>2</sup> Beginning in October 2006, the VA started sending monthly pension checks to the address on the application form.

The monthly checks were made payable to William Phillip Armentrout. Defendant cashed the checks at a local liquor store and spent the money.<sup>3</sup> In October 2007, a VA investigator received information from the Social Security Administration

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<sup>1</sup> Pension benefits differ from compensation benefits. A veteran obtains compensation for service-related injuries. A veteran who qualifies may obtain pension benefits even if he or she has no service-related injuries. An initial pension may be granted for war-time service and non-service-related disabilities. A special pension may also be granted to veterans who are bedridden or otherwise unable to care for themselves.

<sup>2</sup> Armentrout, Sr., died on December 10 or 12, 2005.

<sup>3</sup> The payee on the checks was not identified as either Jr. or Sr.

that Armentrout, Sr., was deceased. By December 2007, the investigator had confirmation in the form of the death certificate for Armentrout, Sr. In April 2008, the investigator began surveillance of the address where the checks were being received and interviewed various people connected with defendant and the checks. Defendant was finally arrested in May 2008. By that time he had received and cashed 19 checks. He was charged with 19 counts of forgery, 19 counts of false personation, and 19 counts of grand theft, 57 counts in all. The checks totaled approximately \$40,000.

Defendant testified at his trial. He told the jury he believed the checks were his, as a legacy from his father, stating that his mother had so informed him. Two items of evidence introduced at trial were, first, a VA change-of-address form, signed by defendant and dated December 16, 2007, on which the box “veteran” had been checked,<sup>4</sup> and, second, defendant’s cell phone, which included in the contacts function not only his father’s name but also his date of birth, Social Security number, and driver’s license number. Defendant stated that his wife had prepared the change-of-address form, and he had signed it without reading it. Defendant himself was not a veteran. He could not account for the presence of his father’s date of birth, Social Security number, and driver’s license number on his cell phone. Defendant’s wife did not testify. His mother was too ill to come to court to testify.

In August 2010, defendant was convicted of four counts of grand theft, four counts of false personation, and four counts of forgery. The convictions were for the four checks dated and cashed between February and April 2008, totaling about \$6,000.<sup>5</sup> The jury deadlocked on all the remaining counts.

Defendant had eight prior convictions, both felony and misdemeanor, including 3 one-year enhancements for prior prison terms under Penal Code section

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<sup>4</sup> The form stated, “I am receiving benefits as the” and then gave a choice of boxes to check: “veteran, father, mother, wife, husband, child, fiduciary, surviving spouse, other (specify).”

<sup>5</sup> These were all the checks received and cashed after defendant had sent in the VA change-of-address form.

667.5.<sup>6</sup> He was sentenced to two years for one of the grand thefts (midterm) and all other convictions were either stayed under Penal Code section 654 or were run concurrent with the grand theft sentence. To this, the court added one year each for two of the Penal Code section 667.5 enhancements, and purported to suspend the third for purposes of sentencing.

Defendant has appealed on two grounds. First, he asserts that the third one-year enhancement should have been stricken, not suspended. Second, he asserts that he should have been convicted of only one count of grand theft, because cashing the checks was one offense, not four separate acts of theft. This issue was not raised in the trial court.

## **DISCUSSION**

### **I. Suspension of Enhancement Sentence**

The Attorney General agrees with defendant that the trial court erred when it suspended defendant's third one-year enhancement rather than striking it. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241 [enhancement mandatory unless stricken]; *People v. Jones* (1992) 8 Cal.App.4th 756.) The abstract of judgment does not mention the disposition of the third enhancement.<sup>7</sup> Defendant is correct: the abstract of judgment should be amended to reflect the striking of the third enhancement.

### **II. Multiple Grand Theft Convictions**

Defendant also argues he should not have been convicted of four counts of grand theft, but only of one, because his theft of his father's pension checks was pursuant to a single general plan.<sup>8</sup> The leading case on this issue is *People v. Bailey* (1961) 55

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<sup>6</sup> Defendant received a two-year sentence on one of the grand theft counts and concurrent two-year sentences on the other three grand theft counts. Sentencing on the other eight counts was stayed under Penal Code section 654. Defendant's total basic sentence, before enhancements, was two years.

<sup>7</sup> The minute order of the sentencing hearing shows the third enhancement as "stricken," although the transcript of the hearing represents the judge as saying the enhancement is "suspended."

<sup>8</sup> This issue was not raised in the trial court. It did not surface in this appeal until defendant's supplemental opening brief.

Cal.2d 514 (*Bailey*), which involved a woman who had received over a year's worth of monthly welfare checks while misrepresenting her marital status. The issue in *Bailey* was whether a series of checks for amounts under the threshold for grand theft could be aggregated to support a grand theft offense. (*Id.* at p. 519.) The California Supreme Court held that it could. (*Ibid.*)

Although the issue in *Bailey* was whether small amounts can be added up to meet the grand-theft threshold, the rule has also been applied to overturn convictions on multiple counts of grand theft in cases where the stolen amount in each count exceeded the minimum but each theft was part of an overarching plan and design. (See, e.g., *People v. Kronemyer* (1987) 189 Cal.App.3d 314] (*Kronemyer*) [lawyer looted client's savings accounts as single scheme]; *People v. Packard* (1982) 131 Cal.App.3d 622 (*Packard*) [defendant set up fake company to defraud Paramount Studios]; *People v. Richardson* (1978) 83 Cal.App.3d 853 (*Richardson*), disapproved on other grounds in *People v. Saddler* (1979) 24 Cal.3d 671, 682 [plot to steal and cash four warrants for \$800,000 each from City of Los Angeles].)

“Whether multiple takings are committed pursuant to one intention, one general impulse, and one plan is a question of fact for the jury based on the particular circumstances of each case. [Citations.] As with all factual questions, on appeal we must review the record to determine whether there is substantial evidence to support a finding that the defendant harbored multiple objectives. [Citations.] The *Bailey* doctrine applies as a matter of law only in the absence of any evidence from which the jury could have reasonably inferred that the defendant acted pursuant to more than one intention, one general impulse, or one plan. [Citation.]” (*People v. Jaska* (2011) 194 Cal.App.4th 971, 983-984 (*Jaska* ).) In *Jaska*, the court identified several types of evidence indicating a single intent behind a series of thefts. These are: (1) whether defendant concocted a plot or scheme before the actual thefts; (2) whether the defendant targeted particular assets or a discrete sum of money; (3) whether the thefts occurred within a short time span or in a

single location; and (4) whether the defendant committed the thefts using the same method. (*Id.* at pp. 984-985.)

We look at the record to see whether substantial evidence supports an inference of a single offense or multiple objectives in this case. (*People v. Tabb* (2009) 170 Cal.App.4th 1142, 1149-1150.)

But in this case, our execution of that task is made easier by the Attorney General's concession at oral argument that substantial evidence does not support the inference of multiple objectives. While not determinative, that concession certainly provides guidance for our review. We find nothing to convince us that concession is ill-founded in this case, and therefore reverse three of the four counts against appellant.

### **DISPOSITION**

Appellant's conviction is reversed in counts 51, 54, and 57. The third prior prison term enhancement alleged against him, which the court ordered suspended, is ordered stricken. His conviction on count 48 is affirmed. The clerk of the superior court is ordered to amend the abstract of judgment to reflect dismissal of the three reversed counts and striking of the enhancement. Since appellant's sentence was based on the mid-term of one count plus enhancements for his other two prior convictions, and our judgment does not affect any of the evidence against him, this resolution does not alter his sentence.

BEDSWORTH, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.